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AUTHOR	Goldberg, Ellie
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ABSTRACT

Asserting that school buildings under renovation and even newly built schools may have polluted indoor environments that cause health problems and hinder learning, this guide introduces special education and anti-discrimination laws designed to remove barriers to education for children with disabilities such as chronic health impairments. The guide addresses the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, effective communication and advocacy, some signs and symptoms of indoor air pollution, and how to address a problem. The guide also includes organizational and published resources. (EV)

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Guide To
Protecting Vulnerable Students in "Sick" Schools

Healthy Schools Network, Inc.
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Children are required to attend school and schools are required to serve all children. At the same time school facilities may be in such poor condition that health and learning are undermined. Buildings under renovation and even newly built schools may have polluted indoor environments that cause health problems and hinder learning. Many parents, health professionals and school officials are unaware of legal principles and procedures that could help prevent or correct unhealthy school conditions and protect a child's health and education. This guide is an introduction to the special education and anti-discrimination laws designed to remove barriers to education for children with disabilities, such as chronic health impairments.

"When legislation made public school attendance mandatory for children up to a certain age, it brought with it certain inescapable obligations. Since school attendance is mandatory in the United States, schools are required to provide pupils with a safe and healthful environment."

School Safety Handbook, 1986. The Association of School Business Officials International and The National Safety Council.

"IDEA"

PROTECTION UNDER FEDERAL SPECIAL EDUCATION LAWS

The Individuals with Disabilities Education Act

The Individuals with Disabilities Education Act (IDEA) is a federal law that requires school districts to provide a free and appropriate public education for students with disabilities. Students may be eligible if their condition fits into one or more of the designated disability categories and the disability interferes with learning.

"Health Impaired" is a disability category under IDEA defined as having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that— (1) is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia; and (2) adversely affects a child's educational performance.

"504"

PROTECTION UNDER FEDERAL CIVIL RIGHTS LAW

Section 504 of the Rehabilitation Act of 1973 (hereafter "504") is a federal civil rights law that prohibits discrimination in education or employment on the basis of disability. "504" was designed to address barriers to equal access and the usability of facilities, programs and services. All public and private schools receiving federal funding must comply.

DISCLAIMER: Healthy Schools Network does not provide legal or medical advice. The information presented in this guide cannot substitute for the professional advice of a lawyer or physician. The laws and their application change as various rulings help define and clarify different points of law. Readers should consult the U.S. Department of Education Office for Civil Rights or an attorney with experience in your state's education law and federal education and civil rights laws. State laws may not diminish the rights guaranteed under federal law. When a state law conflicts with federal law, federal law is supreme, persuant to the Supremacy Clause of the U.S. Constitution.

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"504" defines "disability" as any physical or mental disorder, disfigurement or condition affecting one or more body systems that substantially limits one or more major life activities (i.e. walking, speaking, learning, or breathing).

Eligibility under "504" is a functional concept meaning that having asthma alone is not a "disability." However, the school's hazardous conditions can create "disability barriers" to students or staff with asthma. Ensuring equal access may require schools to change administrative policies, practices or facilities so that school programs are accessible and usable by all students. When school officials create or ignore environmental problems (such as poor air quality) that are barriers to the student's health management, attendance or achievement, parents should use "504" procedures to notify school officials. It can raise local awareness of and accountability for correcting poor school conditions and controlling environmental and other access barriers.

Importance of a School Nurse

School health services are a **related service** under both IDEA and "504". School health services managed by professional school nurses are the most efficient and straightforward way schools can meet the needs of students with asthma and other environmentally-triggered health problems for safe, continuous, coordinated care. The school nurse's care plan, the Individualized Health Plan (IHP) or an Asthma Action Plan documents a student's health management needs and directs how those needs will be met at school. This includes setting standards for Indoor Air Quality and controlling contaminants and allergic triggers. Parents can also use "504" procedures to address inadequate or ineffective school nursing services.

Understanding "504" Civil Rights

"504" regulations require schools to have a formal compliance system. Schools must inform students, parents and employees whom to contact if policies or practices interfere with their child's access to education. This feedback gives the school the opportunity to correct situations or conditions that discriminate against individuals with disabilities. This complaint procedure can also protect students with disabilities from the arbitrary or misguided actions of school officials.

School Responsibilities Under "504"

- Annually identify and locate all unserved children with disabilities.
- Provide a "free appropriate public education" to each student with disabilities, regardless of the nature or severity of the disability.
- Ensure that students with disabilities are educated with non-disabled students to the maximum extent appropriate to the needs of the student with a disability.
- Establish nondiscriminatory evaluation and placement procedures to avoid inappropriate education that may result from the misclassification of students.
- Establish procedural safeguards that enable parents and guardians to meaningfully participate in decisions regarding the evaluation and placement of their children.
- Afford students with disabilities an equal opportunity to participate in non-academic and extra curricular services and activities.

Health Impaired Students With Asthma And Other Inflammatory Diseases

Students with asthma and other inflammatory diseases are especially vulnerable to the effects of poor air quality that threaten their health and hinder their education. Poor air quality can cause or exacerbate inflammatory diseases such as asthma, allergic rhinitis, sinusitis, and conjunctivitis. Poor ventilation, mold and other pollutants in the school can also contribute to headaches, migraines, rashes, fatigue, irritability, nausea, and difficulty concentrating.

Parents and physicians should refer a child to school officials, asking them to correct unhealthy conditions based on the student's eligibility for accommodations and related services as "health impaired."

The school should follow IDEA guidelines and/or "504" procedures for evaluating the student's needs and for creating an Individualized Education Plan (IEP) and/or " 504" accommodation plan. These documents can include necessary health services, environmental safety standards, modifications or adaptations for physical education, and planning for educational services for health-related absences.

Effective Communication

With and About Your Child

- Educate yourself and your child about irritants and allergic triggers. Encourage your child to tell you about symptoms such as headaches or difficulty breathing as well as observations about poor school conditions or renovations. Track your child's health problems in a log book.
- Keep records of your own observations of facility conditions, maintenance practices and activities.
- Keep a dated log of all your child's health, learning, and behavioral problems, school days missed or interrupted, and the degree and severity of symptoms and illnesses. Be alert for symptom location and timing patterns.
- Share your records with your physician.
- Practice healthy housekeeping at home.

This Guide was made possible through generous grants from The Beldon Foundation and The Educational Foundation of America.

Effective Advocacy

With Your Physician

- Inform your health care provider about conditions or activities at school that affect your child's health.
- Educate your health care provider about your child's rights.
- Ask your doctor to write a letter to the school principal with "doctor's orders" for a health management plan that includes recommendations for good ventilation and protection from allergens, irritants and pollutants. This letter may also provide back-up for requesting "504" accommodations.
- Your physician should also direct the school nurse and teachers to monitor, document, and report your child's symptoms or complaints.
- If there is an immediate risk of harm to your child, ask your physician to write a letter ordering your child's temporary removal from the classroom or school area. The letter should include a request for alternative instructional services and resources until appropriate environmental safety standards are in place.
- If your health care provider is not familiar with environmental or occupational health assessments, you may wish to get advice from another medical expert.

Some Signs and Symptoms of Indoor Air Pollution

Nasal Congestion, Nosebleeds, Wheezing, Worsening Asthma, Shortness of Breath, Red or Watery Eyes, Headaches or Dizziness, Fatigue, Nausea, Vomiting, Loss of Appetite, Fever or Chills, Muscle Aches, Hearing Loss, Rapid Pulse and Changes in Behavior or Personality.

Effective Practices

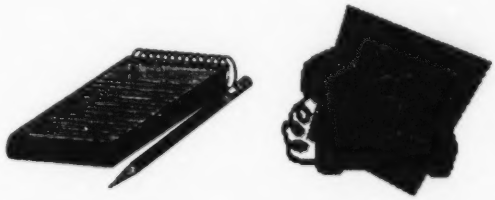
Tips For Schools

- Make sure that both the school district's "504" Officer and the Special Education Chair know the law, and pro-actively follow it.
- Develop Individualized Health Plans (IHPs) for all students with asthma and other environmentally-triggered conditions that interfere with health or learning.
- Be aware that health-impaired children are often the first affected by poor indoor air quality.
- Ensure good ventilation and eliminate or control polluting activities or products, especially during construction and routine maintenance.
- Set purchasing specifications for cleaning supplies and curriculum materials that protect the health and safety of all children, including those with asthma, allergies, and other environmentally-triggered conditions.
- Avoid fragranced products and avoid products with harsh or strong odors.
- Inform parents of complaint procedures and how to report environmental quality problems or health complaints.
- Respond to all questions or complaints in a timely and effective manner.

Effective Advocacy

Parents: Be Effective Advocates!

- Schools get phone calls from parents every day. Put your questions, requests, and concerns in writing.
- Keep a dated log of all phone conversations, including voice mail messages, hallway conversations, emails, letters, faxes or other communication. Follow up each phone conversations with a letter stating your understanding of the discussion. If you need evidence that the school failed to properly respond to your notification of the problem, these documents will support a discrimination complaint.
- Make your own observations. Walk the school hallways and visit your child's classrooms and activity areas. Be alert to the asthma triggers or other hazards that may be affecting his/her health: odors, dust, molds, fumes, animals or their leavings.
- Compare your notes with other parents, and/or with your child's trusted teacher.
- Document what you do at home to maintain your child's health status.



How to Address a Problem

- Write a formal letter to the school principal explaining that the problem is serious and ongoing, and that its effects are causing or have the potential to cause severe medical, educational, and emotional harm. For example, describe new or increased symptoms, missed or disrupted school days, poor test performance, increased medication use, or increased number of doctor visits.
- Identify the conditions or activities that need correction (i.e., remove carpeting or class pet, improve ventilation, stop pesticide use).
- Explain that you are seeking a prompt response and equitable resolution.
- Ask the school principal to acknowledge your request or complaint and to explain what action he or she will take.

Sample Parent Letter

Dear Principal_____: **Date**

Today my daughter Kim had severe breathing problems at school. She said the classroom was very stuffy and smelled bad. Can you please let me know as soon as possible if the ventilation system in her classroom is working properly? Could anything else explain the problem? As you know, she has asthma. She will not be able to attend school tomorrow because it will make her asthma worse if the conditions in the classroom persist. Please arrange for her teachers to send us instructional materials and lesson plans so Kim can keep up with her classes. If you are not the appropriate person to answer my air quality questions, please let me know.

Thanks in advance for your prompt reply,
Ms. Goodmom (phone #, email, fax #)

- If the principal's response is unsatisfactory , redraft the letter addressing it to the School Superintendent with a copy to the School Board, Section 504 Compliance Officer and School Nurse.
- Describe that you perceive the problem as "discrimination." Your letter should ask the superintendent to correct the problem immediately.

You May Claim Discrimination If:

- The school official does not investigate your complaint.
- The school official investigates and does not correct the problem.
- The school official's action is ineffective in ending the problem and/or the discrimination.

Filing a Discrimination Complaint

Parents have the right to file a complaint with the state office of education or the US Department of Education Office for Civil Rights. Obtain a complaint form from the OCR website or US Department of Education's OCR office (see References list for addresses).

- OCR will conduct an investigation by collecting information and conducting interviews.
- If an investigation goes forward, the OCR will issue a Letter of Finding. They may conclude there is "no violation," or cite violations and specify corrective actions.
- If the school fails to follow up, OCR may move to terminate Federal education funds.

RESOURCES

Advocates for Children of New York
151 West 30th Street, New York, NY 10001
Ph: 212-947-9779 **www.advocatesforchildren.org**
AFC provides support to assist parents with unfair and exclusionary school-based systems, policies and practices.

Asthma Moms
www.asthmamoms.com A website with linkages to federal and state entities that promote better practices and standards for the management and prevention of asthma.

Healthy Kids: The Key to Basics, Ellie Goldberg, MEd,
79 Elmore Street, Newton, MA 02159-1137
Ph: 617-965-9637 E-mail: erg_hk@juno.com **www.healthy-kids.info**
Provides information, consulting and advocacy services designed to promote health and educational equity for students with asthma and other chronic health conditions. Consulting to parents, education and health professionals, organizations and policy makers.

Healthy Schools Network, Inc.
773 Madison Avenue
Albany, NY 12208
Ph: 518-462-0632 Fax: 518-462-0433
www.healthyschools.org

120 Wall Street,16th Floor
New York, NY 10005
Ph: 212-482-0204

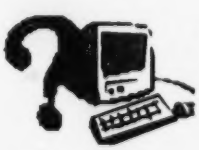
Other HSN publications to help your child and your school:

- *Parent Guide to School Indoor Air Quality*
- *Healthier Cleaning & Maintenance Practices and Products*
- *Kick the Pesticide Habit*
- *School Renovation and Construction vs. Health*
- *What To Do If Your Child Has an Environmental Exposure at School*
- *Help for Parents and Others in the Absence of Standards Just for Children*
- *Guide to NYS Regulations*
- *Disinfectants*

Call the office or visit the web site for additional information on child and adult health and school environmental concerns.

National Center for Environmental Health Strategies, Inc., Mary Lamielle, Executive Director
1100 Rural Avenue, Voorhees, NJ 08043
Ph: 856-429-5358 E-mail: ncehs@ncehs.org **www.ncehs.org**
Provides technical assistance, workshops and advocacy for parents and students, educators and policy makers to solve environmental health problems. Information on products, practices and policies to facilitate access and accommodation for those sick from classroom exposures particularly chemical sensitivities and related disabilities.

US Department of Education, Office for Civil Rights
Customer Service Team, 400 Maryland Avenue, SW
Washington, D.C. 20202-1100 Ph: 1-800-421-3481 Fax: 202-205-9862 TDD: 877-521-2172
E-mail: OCR@ed.gov www.ed.gov/offices/OCR/
How to File a Discrimination Complaint, **http://www.ed.gov/offices/OCR/docs/howto.html**



If you do not have a computer at home, go to your local public library, community college, religious institution, affordable housing coalition, or the office of your state or congressional representative and ask to get help finding resources "on the web".

OTHER RESOURCES and REFERENCES

Dr. Tom Plaut's Asthma Guide for People of All Ages, Thomas F. Plaut, MD with Theresa B. Jones, 1999, Pedipress, Inc., **www.pedipress.com**

Educational Rights of Children with Disabilities: A Primer for Advocates, Eileen L. Ordover and Kathleen B. Boundy, Center for Law and Education, Boston and Washington DC, **www.cleweb.org**

"Legal Aspects of Pollution in Schools," Earon S. Davis, JD, MPH, *Healthy Schools Handbook*, National Education Association, 1995, **www.nea.org**

Legal Issues in School Health Services, Schwab, N. & Gelfman, M., Eds. North Branch, MN: Sunrise River Press, 2001, **www.schoolnursebooks.com/**

Overview: Educational Rights of Children With Disabilities Under the IDEA & Section 504 of the Rehabilitation Act of 1973, Eileen L. Ordover, The Center for Law Education, **www.cleweb.org/Disabilities/overviewIDEA504-799.htm**

"Parent Advocacy: Documents, Records and Paper Trails"
www.wrightslaw.com/advoc/articles/advo.create.trails.htm
Peter W. D. Wright, Wrightslaw, Advocacy tools for parents and schools, www.wrightslaw.com

Standards of Professional School Nursing Practice, National Association of School Nurses, **www.nasn.org**

Students with Environmental Disabilities, Thomas Mela, Senior Attorney, US Department of Education, Office for Civil Rights (OCR) Region I, Boston, MA, **www.ed.gov/offices/OCR**

Technical Assistance Presentation on the Application of Section 504 to Elementary and Secondary School Students, Richard D. Komer, Deputy Assistant Secretary, April 15, 1992, US Department of Education, Office for Civil Rights, **www.ed.gov/offices/OCR**

The Civil Rights of Students with Hidden Disabilities Under Section 504 of the Rehabilitation Act of 1973, US Department of Education, Office for Civil Rights, **www.ed.gov/ocr/docs/hq5269.html**

The Rights Of Students Who Need Health Related Services And Accommodations Manual, www.reedmartin.com/healthrelatedmanual.html, Reed Martin, J.D., Special Education Legal Rights Publications, www.reedmartin.com, "Facts About Section 504,"
www.reedmartin.com/section504facts.html

This guide was developed by Ellie Goldberg, M.Ed., Healthy Kids: The Key to Basics
La-Verne J. Parris, Editor.
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HEALTHY SCHOOLS-HEALTHY KIDS INFORMATION CLEARINGHOUSE

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Contacted on: _____ Referred by: _____ Sent Out By: _____

Name: _____ Organization: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Phone: _____ Fax: _____ E-mail: _____

NOTES: _____

☐ *If willing to speak to Press or at a Public Hearing*

Resources: *Please indicate the number of copies you wish to order. If you need more help or more specific information on any of the resources listed below call us.*

GUIDES: ($3 each except where indicated)

_____ Parent Guide to Indoor Air Quality (6 pgs.)
_____ School Health and Safety Committees (6 pgs.)
_____ School Renovation and Construction (6 pgs.)
_____ Healthier Cleaning and Maintenance Practices and Products for Schools (8 pgs.)
_____ Starter Packet/Supplement to Cleaning and Maintenance Guide/Cleaning Products ($15 each)
_____ Kick the Pesticides Habit: Children, Learning and Poisons Don't Mix (8 pgs.)
_____ Environmental Action Guide for New York City Schools (39 pgs.) ($3 each) / Regulations and Standards
_____ Environmental Action Guide for New York State Schools (79 pgs.) ($10 each) / for indoor environments
_____ Sanitizers & Disinfectants Guide(4 pgs.)
_____ Better Lighting for Healthier Students(4 pgs.)
_____ Ergonomics Prevents Injuries(2pgs.)

REPORTS and SURVEYS: ($2 each except where indicated)

_____ *Environmental Threats to Children* (US Environmental Protection Agency, 1995) (13 pgs.)
_____ *Why Worry When You Send Your Child to School?* (1999) (4 pgs.)
_____ *Neglected Buildings Damaged Health: A 'Snapshot' of NYC Public School Environmental Conditions* (88 pgs.) ($3 each)
_____ *Environmental Quality of Schools (NY Board of Regents,* 1994) (65 pgs.)
_____ *Survey of NYS Association of School Nurses* (2 pgs.)

INFORMATION PACKETS: ($2 except where indicated)

_____ 504 Accommodation Plan (ADA/IEP) ($3)
_____ Asbestos Hazard Emergency Response Act
_____ Allergies, Asthma & Chemical Sensitivity
_____ Carpeting
_____ Children's Environmental Health Policy (Environmental Bill of Rights)
_____ Construction/Maintenance/Green Buildings
_____ NYS Ed. Dept. Endorsement of *Tools for Schools*
_____ Injury, Disease and Fire Safety
_____ Lead Safe, Lead Free (NYS Advisory for Schools)
_____ Mold Packet
_____ Peanut Allergies
_____ Physician's MEMO & Sample letters
_____ NYS Health & Safety Regulations ($7.50)
_____ Students Health Checklist
_____ NYS Education Policy on Toilet Access
_____ Toxic Hazards Near Schools
_____ Video Display Terminals
_____ Food Allergy Emergency Poster

FACTSHEETS: ($1 each)

_____ Right-to-Know: Using the Freedom of Information and Education Laws (2 pgs.)
_____ Access to Decision Making Using the NY Meetings Law (2 pgs.)

NEWS ARTICLES: ($1 each)

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